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8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE CEMETERY AND FUNERAL BUREAU**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. A1 2016 50

13 OAH No. 2017120546

14 **BRIAN JAMES DUKE**
15 **31211 Melanie Court**
Springville, CA 93265

DEFAULT DECISION AND ORDER

16 **Embalmer License No. EMB 8375**
17 **Funeral Director License No. FDR 1139**

[Gov. Code, §11520]

18
19 Respondents.

20 **FINDINGS OF FACT**

21 1. On or about August 28, 2017, Complainant Lisa M. Moore, in her official capacity as
22 the Bureau Chief of the Cemetery and Funeral Bureau, Department of Consumer Affairs, filed
23 Accusation No. A1 2016 50 against Brian James Duke (Respondent) before the Director of
24 Consumer Affairs. (Accusation attached as Exhibit A.)

25 2. On or about January 27, 1997, the Cemetery and Funeral Bureau (Bureau) issued
26 Embalmer License No. EMB 8375 to Respondent. The Embalmer License expired on January
27 31, 2016, and has not been renewed.
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1 3. On or about November 13, 1997, the Bureau issued Funeral Director License No.
2 FDR 1139 to Respondent. The Funeral Director License expired on November 30, 2015, and has
3 not been renewed.

4 4. On or about August 31, 2017, Respondent was served with Accusation No. A1 2016
5 50. On or about September 14, 2017, Respondent signed and returned a Notice of Defense,
6 requesting a hearing in this matter.

7 5. On, December 18, 2017, a Notice of Hearing was served by mail at Respondent's
8 address of record which was and is:
9 31211 Melanie Court
Springville, CA 93265.

10 The Notice of Hearing informed him that an administrative hearing in this matter was scheduled
11 for April 26, 2018 at 9:00 a.m.

12 6. The matter was called for hearing at the date, time and location set forth in the Notice
13 of Hearing. The assigned Administrative Law Judge found that the service of the Notice of
14 Hearing on Respondent was proper. There was no appearance by or on behalf of Respondent. A
15 default was declared and on motion of counsel for Complainant, the matter was remanded to the
16 Bureau under Government Code section 11520. Following the entry of the default on the record,
17 Mr. Duke appeared at the hearing location. The default had already been entered and the matter
18 had been remanded to the Bureau.

19 7. Government Code section 11506(c) states, in pertinent part:

20 (c) The respondent shall be entitled to a hearing on the merits if the respondent
21 files a notice of defense . . . and the notice shall be deemed a specific denial of all
22 parts of the accusation . . . not expressly admitted. Failure to file a notice of defense
23 . . . shall constitute a waiver of respondent's right to a hearing, but the agency in its
discretion may nevertheless grant a hearing.

24 8. California Government Code section 11520(a) states, in pertinent part:

25 (a) If the respondent either fails to file a notice of defense . . . or to appear at
26 the hearing, the agency may take action based upon the respondent's express
admissions or upon other evidence and affidavits may be used as evidence without
27 any notice to respondent
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9. Pursuant to its authority under Government Code section 11520, the Director finds Respondent is in default. The Director will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Director's offices regarding the allegations contained in Accusation No. A1 2016 50, finds that the charges and allegations in Accusation No. A1 2016 50, are separately and severally, found to be true and correct by clear and convincing evidence.

10. The Director finds that the actual costs for investigation and enforcement are \$10,099.62 as of April 20, 2018. The costs shall be reduced by \$4,864.62, which shall be paid by Respondent Peers-Lorentzen in this matter. Respondent Duke shall pay the Bureau the remaining actual and reasonable costs of investigation and enforcement of this matter in the amount of \$5,235.00.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Brian James Duke has subjected his Funeral Director License No. FDR 1139 and Embalmer License No. EMB 8375 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Director of Consumer Affairs is authorized to revoke Respondent's Funeral Director License and Embalmer License based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case:

a. Business and Professions Code section 7707 and 7692, in conjunction with Title 16, California Code of Regulations section 1204 (b), for misrepresentation in that consumer L. A. believed that the premium payments he made to Peers-Lorentzen Funeral Services, Inc. would be made to Americo Financial Life and Annuity Insurance Company or Liberty Insurance Services Company as agreed when in fact they were not.

b. Business and Professions Code section 7707, in conjunction with Title 16, California Code of Regulations section 1204 (b), in that Respondent accepted payments for insurance premiums on a pre-need contract but did not make the payments to the insurance company.

1 c. Business and Professions Code section 7692 for fraud in that from May 10, 2012 to
2 October 24, 2013, Respondent Duke forged six checks for a total amount of \$39,031.70, thereby
3 embezzling funds from Peers-Lorentzen Funeral Service, Inc.

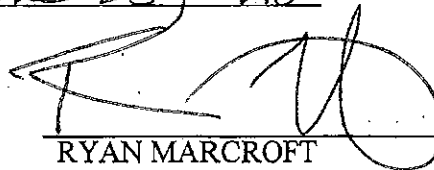
4 ORDER

5 IT IS SO ORDERED that Funeral Director License No. FDR 1139 and Embalmer License
6 No. EMB 8375, heretofore issued to Respondent Brian James Duke, are revoked.

7 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
8 written motion requesting that the Decision be vacated and stating the grounds relied on within
9 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
10 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

11 This Decision shall become effective on July 25, 2018.

12 It is so ORDERED June 25, 2018

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14 

15 RYAN MARCROFT
16 Deputy Director, Legal Affairs
17 Department of Consumer Affairs

18 13119394.DOC
19 DOJ Matter ID:SA2016104897

20 Attachment:
21 Exhibit A: Accusation
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Exhibit A

Accusation

(BRIAN JAMES DUKE)

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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE CEMETERY AND FUNERAL BUREAU**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **PEERS-LORENTZEN FUNERAL**
SERVICE, INC.; MARK W. LORENTZEN,
14 **PRES.,**
15 **132 W. Kern Ave.**
Tulare, CA 93274

16 **Funeral Establishment No. FD 505**

17 **BRIAN JAMES DUKE**
18 **31211 Melanie Court**
Springville, CA 93265

19 **Funeral Director License No. FDR 1139**
20 **Embalmer License No. EMB 8375**

21 Respondents.

ACCUSATION

CASE NO. A1 2016 50

22 Complainant alleges:

23 **PARTIES**

24 1. Lisa M. Moore (Complainant) brings this Accusation solely in her official capacity as
25 the Bureau Chief of the Cemetery and Funeral Bureau, Department of Consumer Affairs.

26 2. On or about March 8, 2002, the Cemetery and Funeral Bureau issued Funeral
27 Establishment License Number FD 505 to Peers-Lorentzen Funeral Service, Inc.; Mark W.
28 Lorentzen, Pres., (Respondent Peers-Lorentzen). The Funeral Establishment License was in full

1 force and effect at all times relevant to the charges brought herein and will expire on March 8,
2 2018, unless renewed.

3 3. On or about November 13, 1997, the Cemetery and Funeral Bureau issued Funeral
4 Director License Number FDR 1139 to Brian James Duke (Respondent Duke). The Funeral
5 Director license expired November 30, 2015, and has not been renewed.

6 4. On or about January 27, 1997, the Cemetery and Funeral Bureau issued Embalmer
7 License Number EMB 8375 to Respondent Duke. The Embalmer License expired on January 31,
8 2016, and has not been renewed.

9 JURISDICTION

10 5. This Accusation is brought before the Director of the Department of Consumer
11 Affairs (Director) for the Cemetery and Funeral Bureau, under the authority of the following laws.
12 All section references are to the Business and Professions Code unless otherwise indicated.

13 6. Section 118 (b) provides:

14 (b) The suspension, expiration, or forfeiture by operation of law of a license issued by
15 a board in the department, or its suspension, forfeiture, or cancellation by order of the
16 board or by order of a court of law, or its surrender without the written consent of the
17 board, shall not, during any period in which it may be renewed, restored, reissued, or
18 reinstated, deprive the board of its authority to institute or continue a disciplinary
proceeding against the licensee upon any ground provided by law or to enter an order
suspending or revoking the license or otherwise taking disciplinary action against the
licensee on any such ground.

19 7. Section 7686 of the Code states, in pertinent part, that the bureau may
20 suspend or revoke licenses, after proper notice and hearing to the licensee, if the licensee
21 has been found guilty by the bureau of any of the acts or omissions constituting grounds for
22 disciplinary action. The proceedings under this article shall be conducted in accordance
23 with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, 1 and the bureau
24 shall have all the powers granted therein.
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STATUTORY AND REGULATORY PROVISIONS

8. Section 7707 of the Code states, "Gross Negligence, gross incompetence or unprofessional conduct in the practice of funeral directing or embalming constitutes a ground for disciplinary action."

9. Section 7692 of the Code states, "[m]isrepresentation or fraud in the conduct of the business or the profession of a funeral director or embalmer constitutes a ground for disciplinary action."

10. Title 16, California Code of Regulations section 1204 (b) provides in pertinent part:

"(b) The designated managing licensed funeral director of a licensed funeral establishment shall be responsible for exercising such direct supervision and control over the conduct of said funeral establishment as is necessary to ensure full compliance with the Funeral Directors and Embalmers Law, the provisions of this chapter and the applicable provisions of the Health and Safety Code. Failure of the designated managing licensed funeral director and/or the licensed funeral establishment to exercise such supervision or control, or failure of the holder of the funeral establishment license to make such designation shall constitute a ground for disciplinary action."

COST RECOVERY

11. Section 125.3, subdivision (a), states, in pertinent part: "Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department . . . upon request of the entity bringing the proceedings may request the administrative law judge may direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case."

BACKGROUND

12. In May of 2002, consumer L.A. and his wife N.A.¹ entered agreements with Peers-Lorentzen for a preneed contract. In order to fund a pre-need contract they agreed to pay for insurance which was initially through Americo Financial Life and Annuity Insurance Company and later changed to Liberty Insurance Services Company. L. A. was informed by Respondent

¹ Initials are used for privacy. The names may be revealed upon receipt of a request for discovery.

1 Duke that he could make cash payments to Peers-Lorentzen and they would pay the insurance
2 premiums. Americo Financial Life and Annuity Insurance Company records show that the last
3 payment they received for the insurance contracts was September 29, 2011. However, receipts
4 provided by L.A. show that Peers-Lorentzen received payments from September 29, 2011 to
5 August of 2012 in a total amount of \$660.00. The premium payments made to Peer-Lorenzen
6 were not forwarded to the insurance company.

7 13. On May 10, 2012, Respondent Duke forged a check made payable to Peers-
8 Lorentzen Funeral Service in the amount of \$3,428.10. On or about July 19, 2012, Respondent
9 Duke forged a check made payable to Peers-Lorentzen Funeral Service in the amount of
10 \$6,139.84. On or about October 18, 2012, Respondent Duke forged a check made payable to
11 Peers-Lorentzen Funeral Service in the amount of \$6,749.68. On or about January 17, 2013,
12 Respondent Duke forged a check made payable to Peers-Lorentzen Funeral Service in the amount
13 of \$5,135.95. On or about April 11, 2013, Respondent Duke forged a check made payable to
14 Peers-Lorentzen Funeral Service in the amount of \$8,804.95. On or about October 24, 2013,
15 Respondent Duke forged a check made payable to Peers-Lorentzen in the amount of \$8,773.18.
16 Respondent Duke cashed the aforementioned six checks for a total amount of \$39,031.70, thereby
17 embezzling funds from Peers-Lorentzen.

18 **FIRST CAUSE FOR DISCIPLINE**

19 (Unprofessional Conduct, Misrepresentation and Failure to Supervise)

20 14. Respondent Peers-Lorentzen and Respondent Duke are subject to disciplinary action
21 under sections 7707 and 7692, in conjunction with Title 16, California Code of Regulations
22 section 1204 (b), for misrepresentation in that consumer L. A. believed that the premium
23 payments he made to Peers-Lorentzen Funeral home would be made to Americo Financial Life
24 and Annuity Insurance Company or Liberty Insurance Services Company as agreed, when in truth
25 and in fact, the premiums were not paid as set forth above in paragraph 12.
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1 **SECOND CAUSE FOR DISCIPLINE**
2 **(Unprofessional Conduct)**

3 15. Respondent Peers-Lorentzen and Respondent Duke are subject to disciplinary action
4 under sections 7707, in conjunction with Title 16, California Code of Regulations section 1204
5 (b), in that they accepted payments for insurance premiums on a pre-need contract but did make
6 the payments for insurance as set forth more fully above in paragraph 12.

7 **THIRD CAUSE FOR DISCIPLINE**
8 **(Fraud/Embezzlement)**

9 16. Respondent Duke is subject to disciplinary action under section 7692 for fraud in that
10 from May 10, 2012 to October 24, 2013, Respondent Duke forged six checks for a total amount of
11 \$39,031.70, thereby embezzling funds from Peers-Lorentzen, as set forth above in paragraph 13.

12 **PRAYER**

13 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
14 and that following the hearing, the Director of Consumer Affairs issue a decision:

15 1. Revoking or suspending Funeral Establishment Number FD 505, issued to Peers-
16 Lorentzen Funeral Service, Inc.; Mark W. Lorentzen, Pres.,

17 2. Revoking or suspending Funeral Director License Number FDR 1139 issued to Brian
18 James Duke:

19 3. Revoking or suspending Embalmer License Number EMB 8375 issued to Brian
20 James Duke:

21 4. Ordering Peers-Lorentzen Funeral Service, Inc.; Mark W. Lorentzen, Pres. to pay the
22 Cemetery and Funeral Bureau the reasonable costs of the investigation and enforcement of this
23 case, pursuant to Business and Professions Code section 125.3;

24 5. Ordering Brian James Duke to pay the Cemetery and Funeral Bureau the reasonable
25 costs of the investigation and enforcement of this case, pursuant to Business and Professions Code
26 section 125.3; and,

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6. Taking such other and further action as deemed necessary and proper.

DATED:

August 28, 2017 Lisa M. Moore

LISA M. MOORE

Bureau Chief

Cemetery and Funeral Bureau

Department of Consumer Affairs

State of California

Complainant

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